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No. 04-1379

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

MARIO MORENO IVANOVA, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF MARIO MORENO REYES,
Petitioner,

v.

COLUMBIA PICTURES INDUSTRIES, INC.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

Brief *Amici Curiae* of the Government of the United Mexican States, Joined by the Mexican Institute of Cinematography and La Asociación de Productores y Distribuidores de Películas Mexicanas

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BRIEF *AMICI CURIAE*

The Government of the United Mexican States, joined by the Mexican Institute of Cinematography and La Asociación de Productores y Distribuidores de Películas Mexicanas, submits this *amici curiae* brief in support of petitioner Mario Moreno Ivanova, individually and as executor of the estate of Mario Moreno Reyes.[1]

INTEREST OF *AMICI*

Amicus the Government of the United Mexican States has a substantial interest in this case because it involves a Mexican citizen, residing in Mexico, who – after being held in contempt of court for conduct that occurred solely in Mexico and was indisputably legal there – was deemed a fugitive in the United States for the express purpose of precluding his appeal from the judgment against him. *Amicus* is concerned that the decision below creates a general rule that the "fugitive disentitlement doctrine" may be broadly applied to insulate from appellate review rulings against Mexican citizens who dispute the jurisdiction of U.S. courts and thus decline to comply with orders by those courts. More generally, and although this issue is not directly presented by the petition for certiorari, *amicus* is also gravely concerned about the underlying judgment itself, in which a U.S. court granted a U.S. corporation worldwide ownership rights in certain Mexican films and, on the basis of that ruling, impermissibly enjoined activity in Mexico by the Mexican copyright holder of those films. Such a result, *amicus* respectfully submits, constitutes an intrusion to Mexico's sovereignty. Appellate review of that ruling is thus essential,

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[1] No person other than *amici* and their counsel participated in the writing of this brief or made a financial contribution to the brief. S. Ct. R. 37.6. The letters signifying the parties' consent are on file with this Court.

but has been precluded by the Ninth Circuit's misapplication of the fugitive disentitlement doctrine.

Amicus the Mexican Institute of Cinematography (IMCINE) is an agency of the Mexican Government, through the National Council for the Culture and the Arts (CONACULTA), with responsibility for the protection and promotion of the nation's domestic movie industry and the distribution of Mexican films internationally. *Amicus* La Asociación de Productores y Distribuidores de Películas Mexicanas is the most prominent motion picture association in Mexico and, among other things, addresses film distribution rights in Mexico. For each of the thirty-four films in dispute in this case, it has issued a certificate that identifies the estate of Mario Moreno Reyes – also known as Cantinflas – as the owner of those distribution rights.

In addition to the interests of the Mexican Government outlined above, all *amici* have an interest in this action because petitioner was held in contempt and subsequently deemed a fugitive when he refused to withdraw the Mexican copyrights of, and turn over the original film negatives for, motion pictures produced by and starring Cantinflas, who was petitioner's father and is widely acclaimed as one of Mexico's most beloved cinematic and cultural figures. Because the films at issue constitute a very important part of Mexico's acclaimed film history and Mexico's cultural patrimony, this dispute is a subject of significant concern to all *amici*.

STATEMENT

This is a case in which a permanent Mexican national was deemed a "fugitive" from U.S. law when he declined to travel to the United States to surrender to an arrest warrant issued by a federal district court for conduct that occurred in Mexico and was indisputably legal there. Moreover, the arrest warrant in question was issued not because respondent had been prejudiced by petitioner's conduct, but instead for the express purpose of precipitating the dismissal of his appeal pursuant to the fugitive disentitlement doctrine.

Application of that doctrine to cases such as petitioner's substantially undercuts the rights of Mexican nationals, including by potentially eliminating their rights to appeal in cases in which they dispute the issuing court's jurisdiction. This Court should thus review the judgment below in the exercise of its supervisory authority over the federal courts to ensure the uniform and consistent application of the fugitive disentitlement doctrine's narrow exception to the statutory right to appeal.

I. The 1993 Interpleader Action Producing the Stipulated Judgment

1. Petitioner Mario Moreno Ivanova is a citizen of Mexico and has long resided in Mexico City with his family. He is the son and executor of the estate of Mario Moreno Reyes, who – under his stage name, "Cantinflas" – was an international film star in the Spanish-speaking world. Between 1940 and 1981, Cantinflas starred in and produced approximately fifty motion pictures and gained renown as one of Mexico's most important cultural figures.

2. Respondent Columbia Pictures Industries, Inc. was the longtime distributor of the Cantinflas films. In August 1993, after Cantinflas's death, respondent filed an interpleader action in the U.S. District Court for the Central District of California in which it sought to resolve allegedly conflicting claims to the producer's share of the proceeds (also known as "participations") from its distribution of the Cantinflas films. Pet. 5. Among the defendants in the interpleader action were petitioner and Eduardo Moreno Laparade, who was Cantinflas's nephew.

In 1994, petitioner voluntarily appeared in the interpleader action for the limited purpose of allowing the parties to enter into a settlement agreement, known as the "Stipulated Judgment." The Stipulated Judgment provided that respondent could continue to distribute the Cantinflas films to the extent that it had rights under various distribution contracts, and that participations due under those contracts

would be distributed according to specified percentages. Because both Laparade and petitioner claimed rights to the same interest in the films, the Stipulated Judgment provided that those participations would be paid into escrow pending the resolution of a case filed by Laparade in Mexico seeking a declaration that he, rather than the Cantinflas estate, owned the copyrights to the films. Pet. App. 60a.

In executing the Stipulated Judgment, petitioner made clear that the settlement agreement would provide future jurisdiction in U.S. courts only on a very narrow basis. That document expressly provides that petitioner:

> hereby appear[s] specially and solely for the limited purpose of giving jurisdiction to this Court to enter judgment pursuant to the terms of this stipulation ("the Judgment") and for the enforcement of this stipulation and the Judgment.

Pet. 5-6 n.1.

II. The 1997 Litigation

1. In June 1996, the estate prevailed against Laparade in the Mexican ownership case referenced in the Stipulated Judgment and, through further proceedings in Mexico, was deemed to own the copyrights in all thirty-four films in dispute. Pet. 5.

In 1997, Laparade filed a new complaint in Los Angeles against both respondent and petitioner, once again seeking a declaration that he "was the sole owner of all right, title and interest in and to the" Cantinflas films. The new complaint relied on the 1994 Stipulated Judgment as the basis for jurisdiction. See First Am. Compl. ¶¶ 1, 14, No. CV 97-0615 WJR (Apr. 11, 1997).

Petitioner promptly sought dismissal of the new complaint. He explained that although the Stipulated Judgment authorized the district court to determine whether the judgment in petitioner's favor in his dispute with Laparade had been finally and conclusively resolved by the Mexican court, such that petitioner would be entitled to the

participations placed in escrow pursuant to the Stipulated Judgment, "[n]othing in the Stipulated Judgment permits the Court to determine the substantive issue of whether Laparade has any *rights* to the Films." Petr. Mot. Dismiss 2-3, 10-11, No. CV 97-0615 WJR (Apr. 4, 1997) (emphasis added).

Respondent filed an answer in which it too argued that Laparade's ownership claims fell outside the purview of the jurisdiction retained by the court pursuant to the Stipulated Judgment. Respondent emphasized that aside from the issue of who was entitled to the participations, "the Interpleader Judgment resolved all claims regarding the current and future Motion Picture Proceeds which were generated by [respondent's] exercise of its rights, under copyright and otherwise, to distribute the Motion Pictures." Resp. Answer to Am. Compl., Countercl., and Cross-cl. for Interpleader [hereinafter "Answer & Interpleader"] ¶ 41, No. CV 97-0615 WJR (Apr. 28, 1997).

2. Respondent also filed an entirely new interpleader action as a counterclaim and cross-claim to Laparade's complaint. The interpleader gave rise to the present controversy. Purporting to rely for subject matter jurisdiction on the Stipulated Judgment, 28 U.S.C. 1335, and/or 28 U.S.C. 1367(a), respondent sought a declaratory judgment that resolved the ownership and distribution rights to the Cantinflas films. Although the copyright ownership rights for the Cantinflas films (which in this action respondent would claim for itself) were not at issue in the Stipulated Judgment, respondent effectively sought to bootstrap its counter- and cross-claims to that agreement, asserting that the Stipulated Judgment was arguably based on its ownership of the Cantinflas films, such that the judgment in the Mexican ownership case was "inconsistent with the terms of the" Stipulated Judgment. Answer & Interpleader 13-14.

Petitioner moved to dismiss respondent's interpleader complaint. As with Laparade's suit, petitioner explained that the district court lacked subject matter jurisdiction over

respondent's new counter- and cross-claims because they too were not covered by the Stipulated Judgment. See Petr. Mot. Dismiss 2, No. CV 97-0615 WJR (Apr. 25, 1997).

In July 1997, the district court ruled that Laparade's ownership claims should be dismissed – because the Mexican courts had "clearly reached a final and nonappealable decision" against him – and that the Stipulated Judgment did not provide a jurisdictional basis for those claims. Pet. App. 65a-67a. However, the court permitted respondent's cross- and counterclaims to go forward, agreeing with respondent that "the Stipulated Judgment was at least arguably premised upon the notion that [respondent] owned the rights to the subject films." *Id.* 70a.

The district court modified its ruling one month later, staying all of the claims and counterclaims pending proof of a final disposition of the dispute between Laparade and petitioner over the ownership of the copyrights to the Cantinflas films. Order Staying Action Pending Final Disposition of Related Matter in Mexican Cts., No. CV 97-0615 WJR (Aug. 28, 1997). Pursuant to that order, and although that very issue had already been resolved by the Mexican courts, Laparade again filed a suit in Mexico seeking a declaration that he owned the copyrights in the films. Respondent filed a counterclaim in that litigation, seeking a declaration that, through various unspecified contracts, it had acquired the copyrights at issue. Resp. Countercl., Mex. Fed. Dist. Ct. Case 19/98, Sec. A (July 8, 1998).

3. In 2000 and 2001, the district court issued a series of extraterritorial preliminary injunctions. First, at respondent's request, in May 2000 it enjoined the ongoing Mexican ownership proceedings that Laparade had, pursuant to the court's August 1997 order, commenced. Pet. App. 54a. The court hypothesized that "[i]f the Mexican proceedings result in a judgment naming either [petitioner] or Laparade as the sole owner of all rights in the Cantinflas films, it could invalidate the Stipulated Judgment, thereby undermining the

Court's jurisdiction over this action and extinguishing [other] interests * * * that were established by the Stipulated Judgment." *Id.* 55a. In 2001, the district court issued two additional extraterritorial injunctions directed at Mexico: (1) a July 31 preliminary injunction that prohibited petitioner from exploiting eight of his father's films anywhere in the world, Pet. 13; and (2) a November 20 preliminary injunction that prohibited petitioner from distributing the remaining twenty-six films anywhere in the world, Pet. App. 30a.

4. In February and March 2002, the district court held a trial on respondent's cross- and counterclaims. All arguments regarding Mexican copyright law were excluded from the trial. See Order re Mot. in Limine, No. CV 97-0615 WJR (Mar. 13, 2001). Moreover, when petitioner brought several of the original film negatives to the trial in an effort to prove his ownership of the films, the district court granted respondent's request that the negatives – which are considered to be an important part of Mexico's cultural heritage, see Pet. 15 – be confiscated as respondent's property, *id.* 15 n.6, and ordered respondent to pay merely a one-dollar bond in conjunction with the confiscation, see Pet. App. 27a.

In June 2002, the district court entered its Findings of Fact and Conclusions of Law. Pet. App. 11a-28a. The court disposed of the dispute over the thirty-four Cantinflas films at issue in two parts.

First, it addressed the dispute over twenty-six Cantinflas films for which respondent claimed complete ownership and distribution rights. Relying in part on an unsigned loan guarantee dated March 10, 1960, the district court declared respondent "to be the owner of all rights, title and interest in" the twenty-six pictures and found, by contrast, that petitioner "holds no ownership interest" in the pictures. Pet. App. 26a ¶ 1. Based on that finding, the court ordered petitioner to deliver to respondent from Mexico the film negatives for any of the twenty-six pictures in his possession. *Id.* 27a ¶ 5.

The district court then turned to eight additional Cantinflas films, in which respondent had never asserted any ownership rights. Instead, respondent initially sought only a declaration that it was owed certain rights of first refusal by the estate. See Pet. 13. Pursuant to a request made by respondent in its post-trial brief, see Resp. Phase II Post-Trial Br. 17-18, No. CV 97-0615 WJR (Apr. 10, 2002), however, the court instead found that petitioner had not established any rights in the eight pictures and thus permanently enjoined him from distributing those pictures. Pet. App. 26a-27a. The court also ordered petitioner to relinquish to a U.S.-based film laboratory any film negatives that he possessed for the eight pictures. *Id.* 27a.

Significantly, and despite respondent's admission at trial that petitioner owns both the Mexican copyrights to all of the Cantinflas films at issue and the exclusive right to distribute those films in Mexico, see Mem. Supp. Mot. for Order Granting New Trial 3, No. CV 97-0615 WJR (June 24, 2002) (citing trial transcript), the district court also continued its extraterritorial injunction, as it "permanently enjoin[ed] [petitioner] * * * from * * * distributing, marketing, offering for distribution or sale, or otherwise exploiting or benefiting from any of the 34 Motion Pictures" anywhere in the world, *including Mexico*, Pet. App. 27a ¶ 4.

In September 2002, in response to petitioner's post-trial motions, the district court stayed its June 2002 order requiring petitioner to turn over the original negatives. Rev. Order re Mot. for Order Granting New Trial 1-2, No. CV 97-0615 WJR (Sept. 10, 2002).

The district court entered its final judgment on January 28, 2003. Petitioner appealed.

In February 2003, petitioner moved forward with his plans to distribute in Mexico two motion pictures for which he holds the Mexican copyrights and all relevant licenses. Both pictures were among the eight as to which respondent had only claimed rights of first refusal. Despite the district

court's express finding that respondent had not established any rights to those pictures, respondent nonetheless filed a motion asking the district court to hold petitioner in contempt. In its order granting the motion, the district court explicitly acknowledged that petitioner's plans did not prejudice respondent in any way, but explained that "the absence of prejudice * * * does not excuse [petitioner's] failure to comply with this Court's order." Order Granting Resp. Mot. for Order Holding Petr. in Civ. Contempt 5, No. CV 97-0615 WJR (Apr. 11, 2003). As a further sanction for petitioner's distribution of the two films, the district court lifted its September 2002 stay order, thereby ordering petitioner to turn over all of the film negatives in his possession. *Id.* 6.

On April 16, 2003, petitioner filed a declaration in which he indicated that he intended to distribute some of the eight pictures in Mexico on DVD. Decl. of Petr. 1, No. CV 97-0615 WJR (Apr. 16, 2003). Petitioner further averred that he had decided to distribute those pictures only after confirming with both his Mexican counsel and the Mexican copyright office that the distribution was entirely legal under Mexican law. *Id.* 2-3. Although in the same declaration petitioner assured the court that he was not distributing any of the other twenty-six pictures anywhere, *id.* 2, the district court held petitioner in contempt and ordered him to pay fines of ten dollars per day for each of the thirty-four films at issue, with the fines increasing by ten dollars per film every seven days, see Order Granting Resp. Mot. for Order Holding Petr. in Civ. Contempt 6, No. CV 97-0615 WJR (Apr. 28, 2003); Pet. 15. Those fines now total well over ten million dollars.

Beginning in April 2003, respondent filed a series of motions in which, relying on the contempt orders, it asked the district court to issue a warrant for petitioner's arrest. In those motions, respondent also suggested that if such a warrant were issued and petitioner did not surrender to U.S. authorities to be incarcerated, the fugitive disentitlement doctrine could be invoked to dismiss his appeal. On July 11, 2003, the district court issued a warrant for petitioner's arrest.

Pet. App. H. The court was well aware that petitioner would not comply with the warrant, as it specifically stated that petitioner "lives in Mexico and is not likely to present himself to a U.S. Marshal for arrest." Pet. 15-16. The court in fact intended petitioner's overseas residency to lead to the dismissal of his appeal: "[I]f [petitioner] refuses to present himself for incarceration, under the 'fugitive disentitlement' doctrine the Ninth Circuit may dismiss the now-pending appeal from this Court's Judgment." *Id.* 16.

6. In February 2003, petitioner filed a complaint against respondent in the same district. Pet. 16-17. This action was necessary both because respondent had failed to pay participations owed to the estate under the Stipulated Judgment for its distribution of the twenty-six Cantinflas films and because the district court had specifically declined in the earlier suit to reach the issue of the Mexican copyrights for the films – which, petitioner alleged, respondent was infringing. Respondent filed a counterclaim, see Pet. 17-18 & n.7, in which it contended, *inter alia*, that petitioner had infringed on its common-law rights in the twenty-six pictures in which respondent had previously been deemed to have ownership rights. Because the district judge who had considered the earlier proceeding had taken senior status and had declined to add petitioner's action to his docket, the case was assigned to a new judge. Transfer Order, No. CV-03-01033-DT (Feb. 25, 2003).

When petitioner's trial counsel missed a scheduling conference, the court immediately entered judgment against petitioner and in favor of respondent on its counterclaims. Pet. 17-18. In addition to a $25 million judgment, respondent was also awarded all of the funds – intended to be paid to the prevailing party in the Mexican copyright litigation – in the escrow account established pursuant to the Stipulated Judgment; petitioner's Mexican copyrights for the Cantinflas films as a sanction for his counsel's failure to appear; and an injunctive order requiring petitioner to withdraw all of the U.S. and Mexican copyrights that he held. *Id.* 17.

Significantly, the district court ordered this transfer of the Mexican copyrights despite (1) respondent's earlier acknowledgement that petitioner properly held such copyrights; (2) respondent's express representation that the district court's June 2002 findings of fact had not decided the issue of the Mexican copyrights; and (3) petitioner's possession of certificates reflecting the estate's sole ownership of the Mexican copyright and distribution rights. Petitioner appealed that ruling.

In June 2004, after petitioner had withdrawn the U.S. copyrights but declined to withdraw his Mexican copyright registrations, the court also issued an arrest warrant as a civil contempt sanction that, as the court specifically noted, was intended "to allow [respondent] to assert the fugitive disentitlement doctrine with respect to the appeal." Pet. 18.

7. The Ninth Circuit consolidated petitioner's appeals. Explaining only that petitioner – who had remained in Mexico throughout the appeal – "ha[d] refused to abide by the district court's orders, and ha[d] refused to surrender to the warrants issued for his arrest," the court of appeals followed the suggestion of both district courts and dismissed the appeals based on the fugitive disentitlement doctrine. Pet. App. 7a.

ARGUMENT

Amici submit that certiorari is warranted because the decision below is an unnecessary invitation to friction between the United States and foreign nations. If the Ninth Circuit's decision is allowed to stand, it will allow foreign citizens living abroad to be drawn into litigation in U.S. courts against their will, even when jurisdiction is at best attenuated, without the right to appeal guaranteed by U.S. law. If, as in this case, an adverse judgment enjoining extraterritorial conduct that is legal where it occurs is entered against those foreign nationals over their objections, the unsuccessful defendants will then face the Hobson's choice between complying with the improper injunctions to ensure

that their appeals are considered on the merits or continuing the conduct at issue but risking dismissal of their appeals. Such a scenario is both a blueprint for plaintiffs who wish to secure an appeal-proof judgment against foreign nationals living abroad and a recipe for conflict between sovereigns. Moreover, in today's interdependent world, such a scenario is increasingly likely to recur. Between the United States and Mexico, for example, there is nearly $250 billion in trade annually. See Office of the U.S. Trade Rep., *NAFTA: A Decade Of Success*, *available at* http://www.ustr.gov/Document_Library/Fact_Sheets/2004/NAFTA_A_Decade_of_Success.html (visited May 9, 2005). The volume of litigation involving that extensive commerce, and cases involving foreign nationals generally, is already substantial and sure to continue to grow.

I. Foreign Nationals Such as Petitioner Have the Right to Appellate Review.

Amici submit that certiorari is warranted because the decision below effectively precludes appellate review of adverse judgments against foreign nationals who dispute a U.S. court's jurisdiction to consider a case and therefore decline to comply with the court's order.

In this case, petitioner is a Mexican national who contested both the district court's jurisdiction to consider the interpleader action in which he was a defendant and the merits of the court's decision awarding respondent worldwide ownership rights in the Cantinflas films. It is uncontestable that 28 U.S.C. 1291 – which states, in relevant part, that "[t]he courts of appeals * * * shall have jurisdiction of appeals from *all* final decisions of the district courts of the United States" (emphasis added) – provides Mexican nationals with a right to appeal. To be sure, the fugitive disentitlement doctrine is a narrow judicially created exception to that right, but that doctrine is both inapposite here and, as this Court has recognized, intended to be invoked rarely and only in unusual circumstances. See *infra* Part II.

In the view of *amici*, nothing else in the statute creates an exception that, as in petitioner's case, precludes a party who is the subject of a civil contempt order from bringing an appeal challenging the district court's very jurisdiction over the proceeding at issue. To the contrary, *amici* note that in *United States Catholic Conference* v. *Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 73-74 (1988), the petitioners had been held in civil contempt after they had repeatedly declined to comply with subpoenas issued by a federal district court on the ground that the court lacked subject matter jurisdiction. This Court expressly held that petitioners had a right to attack the contempt order "by asserting that the issuing court lacks jurisdiction over the case." 487 U.S. at 76.

Moreover, although the inherent power of federal courts to punish contempt is well-established, see *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 44 (1991), the district courts' actions in this case represent a significant and unwarranted extension of those powers. Although this Court has recognized that the "outright dismissal of a lawsuit * * * is a particularly severe sanction, yet is within the court's discretion," see *id.* at 45, this Court's precedents also envision that appellate review will be available for review of such sanctions, see *Link* v. *Wabash R.R. Co.*, 370 U.S. 626, 630 (1962) (considering sua sponte dismissal, pursuant to court's inherent powers, of petitioner's case). The decision below approves severe sanctions for contempt while simultaneously removing the court of appeals from its essential, traditional role as a check on erroneous district court rulings. Indeed, other courts of appeals not only acknowledge that "appellate review is available to litigants who are cited for contempt," see *Federal Ins. Co.* v. *Maine Yankee Atomic Power Co.*, 311 F.3d 79, 81 (CA1 2002), but regularly require a litigant who fails to comply with a district court's order to be held in contempt precisely to appeal that adverse ruling, see *Olson* v. *United States*, 872 F.2d 820, 821 (CA8 1989).

Even if the fugitive disentitlement doctrine could, in some circumstances, be properly invoked to dismiss an appeal

arising out of a failure to comply with a civil contempt order, it would certainly not be appropriate in a case such as petitioner's, as there is no authority for a district court to order the arrest of a foreign national, fully cognizant that the foreign national resides abroad and thus will not present himself to be incarcerated, for the specific purpose of obviating the foreign national's ability to appeal. Such an order would effectively allow the district court to insulate its decisions (and in particular those involving foreign nationals) from review, which the courts are not empowered to do.

Finally, while *amici* contend that the invocation of the fugitive disentitlement doctrine to preclude review of an appeal by a foreign national who lives abroad and contests the court's subject matter jurisdiction would be undesirable as a general matter, it is particularly inappropriate in petitioner's case because the district courts' underlying rulings constitute a serious intrusion upon the sovereignty of Mexican law. Neither district court considered Mexican copyright law, which clearly indicates that *petitioner* owns both the Mexican copyrights and distribution rights for the films at issue. Indeed, petitioner possesses certificates that specifically reflect his ownership of the films. And even if respondent wished to challenge petitioner's ownership of those rights, Mexican law requires that such a challenge take place in Mexico pursuant to Mexican law, with the Mexican copyright office joined as a party to the proceeding. Mex. Fed. Law of Author's Rts. arts. 213 & 214 (1996). The district courts' disregard for both this well-established framework for resolving disputes over the ownership of Mexican copyrights and the evidence of petitioner's ownership of those rights is, in the view of *amici*, an affront to Mexico.

II. Certiorari Is Warranted Because the Fugitive Disentitlement Doctrine Was Improperly Applied to Petitioner's Case.

A. Petitioner Cannot Be Deemed a Fugitive.

The ruling below is a matter of serious concern for *amici* because it creates the very real prospect that U.S. courts will classify other foreign nationals who challenge the court's subject matter jurisdiction as "fugitives" merely because they live abroad and, if they fail to comply with every aspect of a court order, decline to travel to the United States to face incarceration – even when they can in no way be described as having "fled" the United States.

Throughout these proceedings, petitioner has been a citizen and resident of Mexico. He has neither an office nor a residence in the United States. Despite petitioner's lack of contacts with the United States, he was nonetheless haled into court by respondent in 1993 and, to settle that action, agreed to the Stipulated Judgment, which specified how the participations would be divided. Pet. 5-6 & n.1. Despite the Stipulated Judgment's extremely narrow jurisdictional provision, petitioner was – over his repeated objections – then subjected to an adverse judgment that stripped him of all rights to the films themselves, anywhere in the world. When petitioner refused to comply with selected portions of the court's order and instead conducted business in Mexico that was indisputably legal there, the district court issued a warrant for petitioner's arrest for the express purpose of rendering him a "fugitive" and thereby precluding his appeal.

Amici have been unable to locate a single case in which the fugitive disentitlement doctrine has been invoked in circumstances even remotely analogous to those present here. Indeed, when confronted with civil defendants who had resided outside the United States throughout the proceedings at issue, at least two courts of appeals have expressly declined to deem those defendants fugitives. See *Motorola Credit Corp.* v. *Uzan*, 115 Fed. Appx. 473, 474-75 (CA2 Oct. 22,

2004) (denying motion to dismiss appeal on fugitive disentitlement grounds and explaining that individual defendants "have resided in a foreign country all along, and were only 'present' in the Southern District in the barest sense necessary to support personal jurisdiction. Although there is no *per se* rule against dismissing the appeal of a nonresident, we believe that a nonresident who appeals an adverse judgment is in a different position than the typical fugitive who leaves a jurisdiction for the sole purpose of evading a judgment."); *March* v. *Levine*, 249 F.3d 462, 469-70 (CA6 2001) (noting that U.S. defendant living in Mexico was "arguably not a fugitive given that the [contempt] orders were entered against him *after* he moved to Mexico"), cert. denied, 534 U.S. 1080 (2002).[2]

Although the absence of analogous cases might in some circumstances carry little weight, the fact that other courts have not applied the fugitive disentitlement doctrine to similar cases must carry enormous significance here in light of the myriad cases brought in U.S. courts against foreign nationals who contest U.S. jurisdiction. Moreover, the dearth of opinions discussing the question is not surprising because – despite the undeniable significance of the issue – courts of appeals regularly dispose of the fugitive disentitlement issue with only a perfunctory discussion, and often on motions panels. See, *e.g.*, *Uzan*, 15 Fed. Appx. at 474-75; *SEC* v. *Winburn*, Nos. 98-5183 & 98-5235, 1999 U.S. App. LEXIS 4001 (CADC Feb. 3, 1999) (per curiam) (granting motion to dismiss on fugitive disentitlement grounds); *Caesars World*,

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[2] By contrast, in *United States* v. *Barnette*, 129 F.3d 1179, 1182 (1997), the Eleventh Circuit applied the fugitive disentitlement doctrine to dismiss the appeal of a former U.S. citizen who had renounced her citizenship and moved overseas after the government filed its petition to hold her in contempt. The court specifically emphasized that the appellant had "remained a resident of Jacksonville, Florida" and paid U.S. taxes throughout most of the proceedings at issue. *Ibid.*

Inc. v. *Milanian*, Nos. 03-16063 & 03-16685, 2005 U.S. App. LEXIS 1533, at *6 n.1 (CA9 Feb. 1, 2005) (mem.) (denying motion to dismiss based on fugitive disentitlement doctrine). Nor has this Court definitively resolved whether the mere fact that a party to a proceeding resides overseas automatically renders him a fugitive or whether a district court can issue an arrest warrant for the express purpose of precluding an appeal. As we discuss in the next section, this Court's precedents strongly suggest that both questions should be answered in the negative. But, in any event, both questions cry out for resolution by this Court in the exercise of its supervisory authority over the U.S. judiciary.

B. Dismissal of Petitioner's Appeal Does Not Serve Any of the Purposes of the Fugitive Disentitlement Doctrine.

The dismissal of petitioner's appeal pursuant to the fugitive disentitlement doctrine is also a matter of significant concern to *amici* because it is neither reasonable nor consistent with any of the purposes that the fugitive disentitlement doctrine is intended to serve. In *Degen* v. *United States*, 517 U.S. 820 (1996), this Court considered whether to extend the fugitive disentitlement doctrine to permit the entry of a civil forfeiture judgment against a claimant with dual U.S.-Swiss citizenship who left the United States for Switzerland before he was indicted on drug trafficking and money laundering charges. See *id.* at 821-22. This Court began by emphasizing the need for caution in invoking the fugitive disentitlement doctrine, explaining that although courts "have certain inherent authority to protect their proceedings and judgments in the course of discharging their traditional responsibilities," "[p]rinciples of deference counsel restraint in resorting to inherent power and require its use to be a reasonable response to the problems and needs that provoke it." *Id.* at 823-24 (internal citations omitted).

In *Degen*, this Court concluded that the application of the fugitive disentitlement doctrine to bar the petitioner's appeal

was inappropriate because "disentitlement is too blunt an instrument for advancing" any of the purposes that may have been served by the doctrine. 517 U.S. at 828. The same is true here. Petitioner is a foreign national, residing abroad, who was haled into a U.S. court in the 1993 interpleader action that resulted in the Stipulated Judgment – which provided for a distribution of the *participations* for the Cantinflas films. Over petitioner's objection, the district court nonetheless bootstrapped respondent's claims regarding *worldwide ownership* of the Cantinflas film rights to the very limited jurisdictional provision in the Stipulated Judgment, awarded respondent ownership and distribution rights in twenty-six of the films at issue, and – despite respondent's concession that petitioner held the Mexican copyright and distribution rights – prohibited petitioner from distributing the films anywhere in the world. Then, although petitioner's failure to turn over the film negatives did not prejudice respondent (including because respondent itself effectively regarded them as worthless), and although petitioner sought to distribute only two films, in which respondent did not have any rights, and then only in Mexico, the district court issued a warrant for petitioner's arrest for the express purpose of making him a fugitive and precluding consideration of his appeal on the merits. In such circumstances, the invocation of the fugitive disentitlement doctrine erodes, rather than enhances, the respect accorded the judgments of the lower courts. See *Degen*, 517 U.S. at 828; see also *FDIC* v. *Pharaon*, 178 F.3d 1159, 1163 (CA11 1999) (declining to apply fugitive disentitlement doctrine to strike foreign national's answer to civil complaint despite his failure to appear in criminal case and concluding that "[i]f such application of the doctrine were permitted, virtually anyone might be able to obtain a judgment against a fugitive simply by filing a claim and moving for judgment based on the fugitive disentitlement doctrine. Such judgments likely would be viewed with much skepticism.").

In declining to extend the fugitive disentitlement doctrine to bar Degen's appeal, this Court further reasoned that none of the rationales for the invocation of that doctrine applied to petitioner. *Amici* submit that those rationales are similarly absent in petitioner's case.

As this Court explained in *Degen*, disentitlement serves a deterrent effect by "discourag[ing] the felony of escape and encourag[ing] voluntary surrenders." *Degen*, 517 U.S. at 824. Any deterrent effect of applying the fugitive disentitlement doctrine to an appellant, such as petitioner, who did not "escape" from criminal proceedings but instead merely remained abroad can at best be negligible. This negligible effect is borne out by the district court's statements that it did not expect the warrant for petitioner's arrest to have any effect, Pet. 15-16, and that it was deeming petitioner a fugitive so that the court of appeals could invoke the fugitive disentitlement doctrine.

Next, the Court explained, the earliest rationale for the Court's invocation of the doctrine, in *Smith* v. *United States*, 94 U.S. 97, 97 (1876), was that "so long as the party cannot be found, the judgment on review may be impossible to enforce." *Degen*, 517 U.S. at 824. The Court in *Degen* contrasted such a scenario from the one before it, explaining that because "the court's jurisdiction over the property [at issue was] secure despite Degen's absence, there is no danger the court in the forfeiture suit will waste its time rendering a judgment unenforceable in practice." *Id.* at 825. Similarly, most of the judgment against petitioner was enforceable despite his absence: the district court's docket reflects that in August 2002, the funds – totaling nearly five million dollars – that respondent had deposited into the interpleader account were returned to it. The need to enforce the portion of the judgment requiring petitioner to turn over the film negatives is at best minimal when respondent itself has admitted both that "original film negatives have no more than emotional and sentimental value" and that "[it] has more than sufficient film elements to" distribute any of the films at issue. Mot. for

Order Granting New Trial 19-20, No. CV 97-0615 WJR (June 24, 2002).

This Court has further held that disentitlement "promotes the efficient, dignified operation of the courts." *Degen*, 517 U.S. at 824 (internal quotation marks omitted). In *Ortega-Rodriguez* v. *United States*, 507 U.S. 234, 244 (1993), in which this Court declined to extend the fugitive entitlement doctrine to a criminal defendant who fled before sentencing but was apprehended before filing his appeal, the Court noted that although the petitioner's flight had delayed proceedings in the district court, his appellate proceedings remained "unaffected by petitioner's flight." 507 U.S. at 245 n.16. Here, too, the "efficient, dignified operation" of the court of appeals was unimpeded by petitioner's status as a "fugitive": although petitioner declined to comply with the district court's rulings and was deemed a fugitive while his case was on appeal, his case was nonetheless fully and expeditiously briefed and argued.

Finally, the fourth rationale cited by this Court is the "need to redress the indignity visited upon the" district court by the defendant's absence. *Degen*, 517 U.S. at 828. In petitioner's case, however, the district court can claim no such "indignity" when it manufactured petitioner's fugitive status precisely to trigger the fugitive disentitlement doctrine and most aspects of its judgment are enforceable even in petitioner's absence.

CONCLUSION

For the foregoing reasons, as well as the reasons set forth in the petition, certiorari should be granted.

Respectfully submitted,

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